

Chapter 70

EASEMENTS, CONSERVATION

§ 70-1.	Title.	§ 70-6.	Procedure for granting easement.
§ 70-2.	Purpose.	§ 70-7.	Valuation for taxation.
§ 70-3.	Legislative authority.	§ 70-8.	Penalties for offenses.
§ 70-4.	Jurisdiction.	§ 70-9.	Prior easements.
§ 70-5.	Definitions.		

[HISTORY: Adopted by the Town Board of the Town of Elma 9-21-2005. Amendments noted where applicable.]

GENERAL REFERENCES

Conservation Board — See Ch. 7.

Subdivision of land — See Ch. 123.

Site plan review — See Ch. 117.

§ 70-1. Title.

This chapter shall hereinafter be known and cited as the "Conservation Easement Law of the Town of Elma."

§ 70-1

§ 70-2

§ 70-2. Purpose.

It is the purpose of this chapter to provide for the acquisition of interest or rights in real property for the preservation of open space and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing, by which the Town of Elma may acquire by purchase, gift, grant, bequest, devise, lease or otherwise the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to acquire "open space" or "open area" as the same is defined in § 70-5 herein.

§ 70-2

§ 70-3

§ 70-3. Legislative authority.

In accordance with § 247 of the General Municipal Law of the State of New York, the Town Board of the Town of Elma has the authority to acquire such interests or rights in land. Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the acquisition of such interest.

§ 70-3

§ 70-4. Jurisdiction.

§ 70-4

This chapter shall apply to the entire area of the Town of Elma.

§ 70-5. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural or scenic resources. For the purposes of this definition, "natural resources" shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

§ 70-6. Procedure for granting easement.

- A. Proposal by owner. Any owner or owners of land may submit a proposal to the Town Board of the Town of Elma for the granting of interest or rights in real property for the preservation of open space or areas. Such proposal shall be submitted in such manner and form as may be prescribed by the Conservation Board and shall include a survey map and metes and bounds description of the proposed area.
- B. Review by Conservation Board. Upon receipt of such proposal, the Town Board shall convey the proposal to the Conservation Board. The Conservation Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town of Elma and may negotiate the terms and conditions of the offer. If the Conservation Board determines that it is in the public interest to accept such proposal, it shall recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the Town should accept such proposal.
- C. Public hearing by Town Board. The Town Board shall, within 30 days of receipt of such advisory opinion, hold a public hearing concerning such proposal at a place within the Town of Elma. At least 10 days' notice of the time and place of such hearing shall be published in a paper of general circulation in such Town, and a written notice of such proposal shall be given to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area, to the school district in which it is located.
- D. Determination. The Town Board, after receiving the reports of the Conservation Board and after such public hearing, may adopt the proposal or any modification thereof it deems appropriate or may reject it in its entirety.
- E. Recording agreement. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the County Clerk's office.
- F. Cancellation. Said agreement may not be canceled by either party. However, the owner or owners thereof may petition the Town Board for cancellation upon good cause shown, and such cancellation may be granted only upon payment of the penalties provided in § 70-8 herein.

§ 70-6

§ 70-7

§ 70-7. Valuation for taxation.

After acquisition of any such interest pursuant to this chapter, the valuation placed upon such area for purposes of real estate taxation shall take into account and be limited by the limitation of the fixture use of the land. The limitation will be calculated by the Assessor first determining the going market value of farmland in the immediate area, which may include farmland in the Towns of Aurora, Marilla and Lancaster. Secondly, the vacant land within the conservation easement of the parcel will have the assessment reduced by the following percentages, thus compensating for the loss in value due to the conservation easement being placed upon the vacant land within the conservation easement of the parcel:

Commitment	Percentage of Reduction
15 to 29 years	50%
30 to 49 years	75%
50 to 75 years	85%
Perpetual	90%

§ 70-8. Penalties for offenses.

If there is a violation of the terms and conditions of the conservation easement agreement or if said conservation easement agreement is canceled by the Town Board upon petition, then the owner or owners of said property must pay to the Town of Elma the following amounts:

- A. All taxes abated pursuant to the conservation easement agreement, as limited by the remainder of this subsection, including those taxes imposed by the state, county, Town, school districts and all special improvement districts and other taxing units to which the property is subject. Repayment of the aforementioned abated taxes shall be based upon the following calculations:
 - (1) Easement agreements violated or canceled before the 15th year will be subject to repayment of the amount of the abated taxes for the past year, multiplied by five.
 - (2) Easement agreements violated or canceled between the 15th and 20th years will be subject to repayment of the amount of the abated taxes for the past year, multiplied by four.
 - (3) Easement agreements violated or canceled in their 20th year or later will be subject to repayment of the amount of the abated taxes for the past year, multiplied by three.
- B. A penalty which is based upon the amount of the previous year's tax abatement, multiplied by a factor (not to exceed 25) equal to the duration of the easement agreement, plus 6%.

§ 70-8

§ 70-9

§ 70-9. Prior easements.

All conservation easements filed in the Erie County Clerk's office prior to adoption of this amendment to § 70-8 of the Elma Town Code shall be governed by the provisions of § 70-8 of the Elma Town Code which were in effect prior to the adoption of this amendment.

